

**Washington Coastal Zone Management
Program Amendment Public Hearings,
February 2005**

Shorelands and Environmental Assistance Program



Washington Department of Ecology

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Shorelands and Environmental Assistance Program
Washington Department of Ecology
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Summary

In December 2003 Ecology adopted a new shoreline master program guidelines rule, WAC 173-26, Sections 171 to 251, which regulates how local governments develop shoreline master programs pursuant to the Washington State Shoreline Management Act (SMA). The SMA is a component of Washington's federally-approved Coastal Zone Management Program. State coastal zone management programs are a voluntary feature of the federal Coastal Zone Management Act (CZMA). The CZMA is administered by the Office of Ocean and Coastal Resource Management (OCRM) of the National Oceanic and Atmospheric Administration (NOAA).

Washington's adoption of the amended shoreline master program guidelines rule is deemed by NOAA to be a major improvement to the state's coastal zone management program, thus requiring a formal program amendment procedure.

The public hearings, the testimony delivered at those hearings, and the responses in this document are a part of that formal process.

The amendment process, however, is primarily a federal process which includes preparation of a Biological Assessment under the Endangered Species Act and an environmental impact statement under the National Environmental Policy Act.

This document addresses only the state's responsibility to conduct hearings on the proposal to amend Washington's CZMP to include the new shoreline master program guidelines rule, WAC 173-26, Sections 171 to 251.

No substantive comments on the proposed amendment to Washington's Coastal Zone Management Program.

One person endorsed the proposal.

Another person did likewise, while seeking reassurance that the State would support the Federal government in preparing an environmental impact statement on the proposal, while making general comments on the Shoreline Management Act itself.

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1 • Introduction

Beginning in 1992 the Department of Ecology (Ecology) began exploring the desirability and rationale for amending the shoreline master program guidelines rule which regulates how local governments prepare their individual local shoreline master programs for implementation of Washington's Shoreline Management Act (SMA). These efforts, in concert with local governments, were carried out in the context of the then-current regulatory reform movement.

In 1995 the Legislature adopted ESHB 1724, directing (among other things) that Ecology "...periodically review and adopt guidelines..." for local shoreline master programs consistent with SMA policy, and "...at least once every five years...conduct a review of the guidelines." Ecology responded by initiating the review process, conducting research, and forming a Shorelines Policy Advisory Group (SPAG) composed of persons representing local governments, environmental organizations, business and industry, and agriculture. A draft report was issued by the SPAG in October 1996. In early 1997 Ecology presented that draft report to the legislatively-mandated Land Use Study Commission (LUSC). The LUSC reached no consensus on the draft report, but did endorse more "efficient and effective" shoreline regulations.

Between 1998 and 2000 Ecology established and worked with a new Guidelines Commission to draft an amendment of the master program guidelines rule. The Commission held 19 meetings and reviewed two draft rules prepared by Ecology, but could not reach consensus on some issues. Ecology issued a draft rule for public comment in April 1999 — this document received a high degree of public scrutiny and comment, much of it critical. Ecology withdrew this draft and used it as a basis for discussions with local and state-level elected officials.

By 2000 the implications of the federal listings of certain salmonid stocks under the Endangered Species Act had become a factor. Throughout 2000 Ecology developed a revised draft rule which included two expressions (Path A and Path B) of means to achieve meet the intents of the Shoreline Management Act and possibly more definitively meet goals for salmon recovery. While controversial, this rule was adopted by Ecology in November 2000.

The rule remained controversial, especially regarding the dual path approach. Coalitions of interest groups appealed the rule to the Shoreline Hearings Board (SHB), and others intervened on behalf of Ecology. The SHB ruled that Ecology had failed to properly conduct the rule review process, and that certain features of Path B exceeded statutory authority. The SHB ruling invalidated the new guidelines rule, but did not invalidate Ecology's repeal of the previous rule, thus leaving the state with no shoreline master program guidelines rule. Quickly, parties to the original SHB appeal moved to appeal the SHB decision to Thurston County Superior Court. However, a mediation process was initiated by the state, embracing all parties to the original SHB appeal. A negotiated settlement was reached by December 2002.

In January 2003 Ecology initiated the public process for formal adoption of the negotiated settlement draft rule. This process proceeded with no controversy, and in

December 2003 Ecology adopted a new shoreline master program guidelines rule, WAC 173-26, Sections 171 to 251.

Washington's Shoreline Management Act is one of the key components of the state's federally-approved Coastal Zone Management Program (CZMP) which in 1976 was the first to achieve approval under the federal Coastal Zone Management Act (CZMA) of 1972. The purpose of the CZMP is to foster state-federal cooperation in achieving the goals of the CZMA which are generally parallel and consistent with those of the SMA. State participation in the federal coastal zone management program is voluntary. Participation results in annual grant awards from the federal program (which are used to implement the state's shoreline management program), and the ability to influence federal agency compliance with the state's coastal management program. The CZMA is administered by the Office of Ocean and Coastal Resource Management (OCRM) of the National Oceanic and Atmospheric Administration (NOAA).

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2 • Public Hearings

This chapter presents transcripts of the three public hearings conducted pursuant to the Federal Coastal Zone Management Act on the proposal to amend Washington's federally-approved coastal zone management program to include the new shoreline master program guidelines rule, WAC 173-26, Sections 171 to 251.

Hearings were held in Seattle, Mount Vernon, and Lacey.

The typescript of the audio recordings has been lightly edited to correct spelling, obvious errors of transcription, and grammar.

Seattle, Washington, February 22, 2005

Opening Remarks, Jerry Thielen, Hearings Officer

Thank you, Peter. Good evening, and again welcome. My name is Jerry Thielen. I'm the Hearings Officer with the Department of Ecology. The Department of Ecology is holding a public hearing, actually three public hearings, on the submittal of the Washington Shoreline Master Program Guidelines Rule, as an amendment to the federally approved Washington Coastal Zone Management Program.

Let the record show that it is 7:14 p.m. on Tuesday, February 22, 2005 and this public hearing is being held at the Mountaineers Building, Pinnacle Room, 300 - 3rd Avenue, Seattle Washington. Notices of this public hearing as well as the other two public hearings were made in the following ways. Publication in the state, excuse me, in the federal register on January 5th and also on January 18th. Paid advertisements in the following newspapers: the Olympian, the Times, the Seattle Post Intelligencer, and the Skagit Valley [Herald] Newspaper. There also were notices made on the Department of Ecology's SEA Program web page – the Shoreline and Environmental Assessment Program's web page site posted January 12th of this year. Close of the comments, written comments, closes – comments must be received by April 1st of this year. They should be addressed to Douglas Canning (that's C-a-n-n-i-n-g), of the SEA Program, PO Box 47600, Olympia, Washington 98594?

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98504-7600. Or to his email address at dcan461@ecy.wa.gov At this time I would like to invite anyone who would like to make public testimony to us to step to the table.

Can we go off the record for this meeting?

Not once I've started the hearing. I need to...

Once it's on the record?

Once we've started the hearing, I need to complete that process.

I have a question to what you've just said.

Okay.

As opposed to Mr. Holland (?), is that right.

Okay, okay.

Sure. Is there enough volume here?

Well, I've stopped the tape recorder so we're

We're off the record.

It didn't stop it.

So at this time I'd like to call anyone to the microphone who would like to provide us with public testimony. We have only two individuals in the room, so I'm not going to limit anyone to any specified amount of time. If it gets into 8 or 9 or may be 10 or 15 minutes and not presenting new and different topics, I might ask that you might summarize and/or submit those in writing to us. But at this time anyone would like to step forward, state your name and any affiliation that you might have and we'll be glad to take your testimony.

Can we go off the record again for a moment?

(laughter)

And again so if anyone would like to step forward at this time, just feel free to do so.

I'm not giving comments.

You're not giving testimony?

Or comments.

Oh, all this way!

No comments, oh dear.

Or if you have written comments and would just like to submit those to me, those will be entered into record.

Oh, yeah, but you know me. I can hardly pass up the opportunity here to (inaudible)

(can't understand)

I'll give you the short version.

Thank you.

Save the longer version for ...

Testimony of David Ortman

Let the record show that he's submitted written testimony here¹. Okay.

My name is David Ortman. I'm president of the Wise Use Movement, PO Box 17804, Seattle, Washington 98127. We've looked at the federal register notices that appeared concerning the proposal to present the amendments to the Shoreline Master Program rules changes that were adopted by Ecology last year to the National Oceanographic and

¹ Mr. Ortman's written testimony was directed to representatives of the federal Coastal Zone Management Program, not the State of Washington.

Atmospheric Administration for their consideration as an amendment to the Washington Coastal Zone Management Program.

First of all, we support having the state submit that amendment to the feds; and think that is a wise decision.

More important question following that then concerns whether the state will support the feds in the preparation of an Environmental Impact Statement which is required whenever an amendment goes beyond what is referred to and NOAA Program says “the routine program implementation.” There’re several reasons why Environmental Impact Statement under the National Environmental Policy Act would be appropriate. First of all the state has already determined that the rules that were adopted, rule changes, amendments, do in fact constitute a state action requiring the preparation of a state Environmental Policy Act document, the EIS that was prepared, or several of them that were prepared over the course of several year the regs were in preparation. And while that provides a foundation for the state’s action, the feds have to look to their own NEPA rules and determine similarly whether that should happen. Now as I recall, the state has submitted three amendments to the Washington State Coastal Zone Program. The last of which, Amendment No. 3, Grays Harbor Estuary Management Plan, did in fact a require an Environmental Impact Statement, so there’s precedent for preparation of one at the federal level.

And I’m basically here tonight to present the case for why that’s a good idea, and why the state should be supportive of this. The state did already provide a compile, some degree of information regarding the state and the status of the coastal zone, and what the impact of the adoption of this particular set of regs might do. However, as was pointed out, the alternative regs that were the preferred alternative or however you want to characterize them – what was adopted at the state level really came out of a negotiated settlement between various parties and because the heart of an Environmental Impact Statement is really the alternatives, it did not appear to us that a full range of alternatives was really analyzed at the state level. And I would like to spend a little bit of time just going through some of that.

You know I’ve heard of ‘preaching to a choir’ but I’m not sure I’m preaching to a quartet here (laughter) and I don’t think that the attendance is any reflection of the sorry state of our coastal zone and Puget Sound. In fact I will refer and have incorporated into my comments the Puget Sound Action Team’s 2004 State of the Sound Executive Summary. I don’t see any members of the Puget Sound Action Team here tonight. But were they here, they might repeat some of the very dire trends that they have characterized in terms of problems from pollution to the decline of marine species to the continued armoring of our shorelines. This I will not read this at that time. But I will say that they conclude by saying that “these cumulative pressures on Puget Sound are driving a silent and slow motion crisis and while the Sound still appears beautiful, it’s diverse web of life is at risk. And the goal of a healthy Puget Sound, now and through future generations, is still within reach.”

And that to me is really the purpose of trying to get this partnership of state, federal, and local activities somewhat coordinated and making some better use of money that is being spent. Even the Seattle PI in its Sunday paper talked about Hood Canal where its oxygen

levels have remained at fairly low levels with no sign of returning to a healthy state. This is after '75, this is now nearly 35 years since the Shoreline Management Program became part of the Washington Coastal Zone Program at the federal level. After 30 years we now have Hood Canal which is seemingly and far worse state of affairs then it was at the beginning. Certainly we cannot say that we are going forward; in fact, it seems in some respects, we are going backwards.

And to try and put some flavor on the federal level, given the fact that we have had some presidential shall we say non-attention to the Coastal Zone Program for some time. The Coastal Zone Program as passed by Congress still maintains that it's the policy of this country to preserve, protect, develop, and where possible to restore or enhance the coastal zone. And that's for protections for everyone that ___ developed, I mean, preserve, protect, restore and enhance —those are the four pieces of the puzzle. And I guess developed where you do not have any other options on the coast.

But the question really for us today is “Can we use this opportunity to look at what has happened over the past 30 some years and to see what is going to be happening in the future if these trends continue – more endangered species, more pollution of shellfish beds, more sediment, more dredging of toxics, more stormwater runoff. These are trends we are trying I think jointly to try and reverse.

Now what specifically we have in mind for an Environmental Impact Statement, is one that can take a look at the, shall we say ‘closing the loop holes’ that have been the impediments to making progress on coastal zone management in the state of Washington.

In our comments here we have outlined specifically the parts of the Shoreline Master Program Rule that have sort of carved off vast sections of things in the coast that really aren't attended to very well. These were things that became part of the Coastal Zone Program back in 1976. Mainly because as was mentioned earlier here Washington state was the first to have their program, first rejected in '75 and then adopted '76, primarily because it had two existing laws on the books – the Shoreline Management Act and SEPA. And unlike other states where the Coastal Zone Program came in with funding where there was no background, was no program of coastal protection and where money then became the real seed of inducement to make something happen.

Here it was seen as more of a rubber stamp of what we already had, and the fact is in Washington state the Shoreline Management Act was written by the developers and passed an initiative process which rejected the environmental alternative. So we had already started out with a plan that gave locals control with the developers writing much of the key segments.

So we now have this problem that there are vast amount of things that are allowed to occur with very little control. And some of those are what we would like to look at when we talk about alternatives. What kind of alternatives to the rules could there be that would have a less adverse environmental impact then what was adopted. Because I think if we're all honest here, we will agree that what was adopted is not enough to stem the tide and turn things around for coastal zone protection in the state of Washington.

For example, the uses that are given for agriculture starts off by saying, "The master program shall not require modification or limit agriculture activities occurring on agriculture land." Well we all know from what's happening at Chesapeake that one of the key problems they're having there has been their inability to deal with agricultural runoff and other types of land uses on ag lands. And so right off the bat here in the state of Washington we have the Shoreline Management Act which just carves off an exemption from ag. And whether or not an alternative that would eliminate that exemption might not improve things should be looked at.

Similarly the commercial development, master programs currently give preference to water dependent commercial uses over non-water dependent commercial uses. And second, give preference to water related and water enjoyment commercial uses over non-water orientated commercial uses. Well, the Coastal Zone was very specific, the Coastal Zone Management Act was very specific in trying to limit congressional policy to things that were of priority in coastal dependent uses -- not water related, water enjoyment, water orientated. We've slid down the slide of calling a lot of things that are nice to have on the water that don't really deserve to be there. And that is not a good policy in terms of environmental impacts. And again an alternative should be to try and close that loop hole and try and formulate one that will have less environmental impacts.

Another example is forest practices. Currently under the Shoreline Act, local master programs should rely on the Forest Practices Act. Well despite what you may have heard, our Forest Practices Act still leaves a lot to be desired, particularly in terms of buffers, especially in terms of leaving enough trees to keep temperature in streams at a place where it will support fish. And to have the Shoreline Act subservient to the Forest Rules is once again a complete carving off of an area, and a huge area given the amount of forest practices we have in this state from any reasonable attempt to reduce environmental impacts in a shoreline.

It's, you know, goes on to look at other types of things related to industry, ports are another example where basically the master program say that whatever a port which has the jurisdiction of a county decides to do and can justify in terms of its own volition basically gets supported because its development and most ports, in fact, are water dependent. But this is suppose to be a statewide program, not a local port program. In this state the ports do not cooperate. The ports compete against each other. Seattle is trying to, you know, screw over Tacoma. Tacoma is trying to screw over Olympia. They're all trying to screw over Long Beach. You know, I don't think from the state of Washington perspective it makes much of a difference if a container goes down to Tacoma as opposed to the Port of Olympia where they're also trying to install containerized shipments. You know every little port in this state can't all become the containerized capital of the world. But the direction of the state program does not really address the alternative of having the ports do port planning in this state in a way that reduces impacts instead of them all trying to fill first and find uses later.

Residential development, we were just having a little discussion about short platting. Short platting is exempt from SEPA. Why just from an environmental standpoint if you're a frog on a lot and someone comes along and wants to short plat you with four lots -- no environmental review. If it's five lots, well alright that must have an impact. But I'll tell you that frog is going to disappear whether it's four lots or five lots. And again

here we have an area in which the state program as adopted pretty much carves out a bunch of exemptions and there are certainly alternatives in terms of a regulatory program that could close those and have less environmental impacts and meet the goals of the Coastal Zone Management Act. I can go on some length.

Ben told me to keep my paper work down below 50 pages, but I think I quit at about 15. But it does continue along this vein in terms of looking for ways of trying to provide protection that goes beyond what the regulations that were adopted do. And I simply believe that this is extremely important.

Because otherwise we are going to go the rat hole of coming back year after year and saying “Woe is us, more shellfish closures.” We are not going to be able to provide a coastal zone for succeeding generations. Nothing’s that sustainable. There’s really nothing that’s going on here that’s sustainable. And again although recognizing that Ecology was somewhat in a pickle because they got hoisted up in court and wound up having to go down this particular road. There’s nothing to prevent NOAA from taking a look and before they send more money this way to at least give us a blueprint about how we can conceivably do some things better. So I will end my remarks on that note and thank you for the opportunity to present comments.

Closing Remarks

Thank you. Any one else? Let me just reel this back in (loud noise). Seeing that there’s no one else who is interested in testifying, let the record show that it is now 7:41 p.m. and this hearing’s is closed.

Mount Vernon, Washington, February 23, 2005

Okay, let the record show it is February 23rd at 7:12 p.m. here at the Skagit Public Utility District Building in Mount Vernon, Washington. Let the record show that no one has showed for the public hearing; therefore it is closed. Thank you.

Lacey, Washington, February 24, 2005

Opening Remarks, Jerry Thielen, Hearings Officer

Again, good evening, and welcome. My name is Jerry Thielen. I’m the Hearings Officer for tonight’s public hearing. The purpose of the public hearing for tonight is to hear your comments on the submittal of the Washington Shoreline Master Program Guidelines Rule, as an amendment to the federally approved Washington Coastal Zone Management Program.

Let the record show that it is now 7:20 p.m. on Thursday, February 24, 2005 and this public hearing is being held at the Department of Ecology Headquarters Offices at 300 Desmond Drive in Lacey, Washington. Notice of this public hearing as well as all three of the public hearings were made in the following ways. Notices in the federal register on January 5th of this year, as well as January 18th. Paid advertisements in the Olympian, the Times, the Seattle Post Intelligencer, and the Skagit Valley News, as well as posting on the SEA Program’s web site here at the Department on January 12th.

At this time if there is anyone who would like to provide testimony, we'll ask that you step forward to the microphone, state your name and any affiliation that you might have. And since we don't have a large gathering, I won't necessarily hold you to any limited amount of time, but if you were to go on for 15, 20 minutes or so I might ask that you summarize. But I'm not going to artificially limit to you to a three-minute time limit. So with that – there's only two of you here – potential candidates, I don't have the sign-in record. But now is your opportunity. Usually we do it on a first-come first-serve basis. So madam, you were here first, if you'd like to...

Testimony of Marly Swanga

Alright, I'll just be quick. My name is Marly Swanga (Sp?) and I am here as a representative of the public. And I just wanted to say I support the process that Ecology's going through in amending the guidelines to Shoreline – amending and doing the guideline rule, and working with NOAA on this process. I believe that I strongly support protections of the shorelines in whatever manner we can achieve them. Thank you.

Alright, thank you.

Closing Remarks

Did you sign in?

I did.

Sir would you like to offer any oral testimony to this?

No, I'm here to learn and observe.

Okay.

And I'll just...

Alright. Well, there's still time to contemplate that because I'm going to give information on how to submit written comment, and the deadline for that -- in the 20 seconds.

Thanks Jerry.

I'd like to announce that comments will be received or will be accepted until April 1st of this year. They should be addressed to Douglas Canning, of the SEA Program (S-E-A Program) PO Box 47600, Olympia, Washington 98504-7600. They can also be submitted using the internet to dcan461@ecy.wa.gov And seeing that there's no one else interested in testifying, can remind you that the close of comment is April 1, 2005. Let the record show that it is now 7:24 p.m. and this hearing's now closed. Thank you.

3 • Response to Comments

Only two persons commented, and both endorsed the proposal to incorporate the new shoreline master program guidelines rule, WAC 173-26, Sections 171 to 251, into Washington's coastal zone management program.

For this we thank them.

One of those commenters, David Ortman, also raised two issues which we interpreted as comments.

First, Mr. Ortman asked "...whether the state will support the feds [federal government] in the preparation of an Environmental Impact Statement..." Mr. Ortman's remarks went on to provide abundant testimony in support of this request.

In response we say, yes, we have been, are, and will continue to do so.

Second, Mr. Ortman made a number of comments on features of the Shoreline Management Act such as deference to the state's Forest Practices Act, the exemption of single-family residences from permitting under the SMA, and deference to existing and on-going agricultural practices.

In response we say, these are features of the legislation, and are not things which Ecology can change; only the legislature can do that.